United States Senate

WASHINGTON, DC 20510

March 16, 2007

The Honorable Robert C. Byrd
Chairman
Senate Committee on Appropriations
Washington, DC 20510

The Honorable Thad Cochran
Ranking Member
Senate Committee on Appropriations
Washington, DC 20510

Dear Chairman Byrd and Ranking Member Cochran:

We are writing to express our strong opposition to language contained in the House of Representatives version of the *Fiscal Year 2007 Emergency Supplemental Appropriations Act* that would undermine the safety and security of our nation's chemical facilities. Section 1501(b) of the bill would strike carefully crafted compromise language that was included in the *Fiscal Year 2007 Department of Homeland Security Appropriations Act* and short-circuit the rulemaking process by the Department of Homeland Security (DHS) to implement this important language.

Concerns have been raised by many about the security of chemical facilities since the tragic events of 9/11. After five years of negotiation and several unsuccessful attempts to pass meaningful legislation, consensus was reached late last year. DHS has just begun the process of implementing that language and will publish its final interim regulation by April 4, 2007. Given the circumstances, we believe it would be premature to enact new legislation before DHS is able to complete the regulatory process and before industry is able to update their security programs to reflect the will of Congress.

The changes proposed by the House would have a damaging impact on our nation's chemical facilities. First, the provision would allow for the government to disapprove and shutdown facilities based on non-security related, prescriptive measures such as environmentally-driven operations change. Any such authority should be based on risk and performance standards for overall site security. Second, the language would withdraw protections for sensitive security information, possibly exposing vulnerability information to terrorists, the very people we are trying to protect these facilities from.

Furthermore, the House proposal would eliminate an important protection against third-party lawsuits. Finally, the language would allow state and local governments to trump the federal government in matters of national security involving privately-owned chemical plants. In this instance, preemption is necessary to establish a single set of national standards and to avoid a confusing, costly, and inconsistent patchwork of security regulations with which the chemical industry must comply. In an attempt to address any conflicts that might arise on this issue,

DHS in the proposed regulations stated that it would "permit State or local governments and/or covered facilities, to seek opinions on preemption from the Department."

Many of these issues have been debated since 9/11. The provisions enacted by Congress less than six months ago provides thoughtful solutions to protect these facilities and their surrounding communities from terrorist attack, without imposing environmental standards or jeopardizing sensitive information.

We urge you to reject any attempts to include this language in the Senate version of the *Fiscal Year 2007 Emergency Supplemental Appropriations Act.*

Sincerely,